



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**Certified Mail, Return Receipt  
Requested, Postage Prepaid**  
**Article No. 7004 2890 0000 5076 5632**

JUN 6 2014

Mr. Bamdad Bahar  
ActivAir, Inc.  
105 Park Avenue  
Seaford, Delaware 19973

Re: Request for Information Pursuant to Section 3007(a) of the Resource  
Conservation and Recovery Act, 42 U.S.C. § 6927(a)  
*Information Request - Reference No. C14-016*  
EPA ID No. DED984075929

Dear Mr. Bahar:

The U.S. Environmental Protection Agency, Region III ("EPA") is requesting information to supplement the information obtained by EPA during and subsequent to an inspection of the ActivAir Inc. (herein after "ActivAir" or the "company") facility located in Seaford, Delaware on September 17, 2012. EPA is requesting this information pursuant to the authority granted to it under Section 3007(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6927(a), which provides in relevant part that "any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, . . . furnish information relating to such wastes . . ." EPA hereby requires that you furnish to EPA, on or before the dates identified below, the information requested below, including all documents responsive to such request.

For each and every request, if you have any reason to believe that there may be a person(s) who may be able to provide a more detailed or complete response to such request or may be able to provide additional responsive documents, then as a part of your response to such request, identify each such person and the additional information or documents which such person may be able to provide. Furthermore, for each and every response, if information or documents responsive to such request are not in your possession, custody or control, then as part of your response to such request, identify each person from whom such information or documents may be obtained.

Please provide a separate narrative response to each question. Precede each answer with the number of the question or letter of the subpart of the question to which it corresponds. A request for documents shall be construed as a request for any and all documents maintained by you or in your custody, control, or possession or in the possession, custody or control of any of your employees or agents, relating to the matters described below. For each copy of a document produced in response to this request, indicate on such copy, or in some other reasonable manner, the number of the request to which it responds, the current location and custodian of the original, the date such original was prepared, the person(s) who prepared the original and the date the document became effective at the Facility.

As used herein, the term "document" means: writings (handwritten, typed or otherwise produced or reproduced) and includes, but is not limited to, any invoices, checks, receipts, bills of lading, weight receipts, toll receipts, correspondence, offers, contracts, agreements, deeds, leases, manifests, licenses, permits, bids, proposals, policies of insurance, logs, books of original entry, minutes of meetings, memoranda, notes, calendar or daily entries, agendas, bulletins, notices, announcements, charts, maps, photographs, drawings, manuals, brochures, reports of scientific study or investigation, schedules, price lists, telegrams, teletypes, phonograph records, magnetic voice or video records, tapes, summaries, magnetic tapes, punch cards, recordings, discs, computer print outs, or other data compilations from which information can be obtained or translated.

All other terms used in this request for information that are defined in RCRA, 42 U.S.C. §§ 6901 *et seq.*, or 40 C.F.R. Parts 260-266 and 268 shall have the meanings set forth therein.

### **INFORMATION REQUEST**

ActivAir previously has provided EPA with information about hazardous waste management units previously operated at the Facility and materials being accumulated at the Facility since the time that Facility operations ceased some time in 2013. Based upon the information previously provided by ActiveAir and the preliminary conclusions made by EPA, as set forth in Section I ("Waste Characterization and Disposal"), below, EPA seeks additional information from ActivAir. Therefore, EPA herein requires that ActivAir respond to the following information request by timely submitting to EPA all requested information and documents responsive to the questions set forth in Section I ("Waste Characterization and Disposal"), immediately below, by the August 30, 2014 date specified therein.

#### **I. Waste Characterization and Disposal**

By letter dated August 19, 2013, ActivAir informed EPA that, subsequent to the company's sale of its equipment and assets and the decommissioning of its New Product Development Laboratory, "small laboratory quantities of materials were moved into the makeup room for safekeeping" and that ActivAir planned to dispose of the materials, including "bulk flammables" and "flammable laboratory chemicals", over "the next 24 months" via "surplus chemical resellers and/or a commercial hazardous waste disposal company." Via e-mail dated February 20, 2013, ActivAir provided EPA with a list of the bulk flammable and flammable laboratory chemicals that remained at the Facility. On February 25, 2014, EPA requested an



update to the number of drums remaining at the Facility, including identification of the content of each drum, associated company removal plans and a summary of which of the already disposed drums contained materials that were resold and which were disposed via a commercial hazardous waste disposal company. By responsive e-mail of February 27, 2014, ActivAir informed EPA that “almost half the barrels (but the majority of it by volume)” had been removed from the Facility for disposal by Giant Resource Recovery and that “the balance (which is mainly partially filled barrels) is due out within literally weeks.” ActivAir also requested an extension to the 10-day deadline EPA had provided for the company’s submission of an inventory list of the contents of all drums remaining at the Facility and for a description of ActivAir’s plans for their removal and disposal. EPA granted such an extension, extending ActivAir’s response deadline to March 28, 2014.

ActivAir failed to provide EPA with the requested inventory in a timely manner and, via e-mail dated May 1, 2014, EPA again contacted ActivAir to request its submission of an inventory list of the contents of all drums remaining at the Facility and for a description of ActivAir’s plans for their removal and disposal. ActivAir responded to EPA’s May 1, 2014 request both by e-mail and by letter, each dated May 12, 2014. In its May 12, 2014 letter, ActivAir updated EPA as to its recent drum disposal activities and informed the Agency that “No materials were sold as surplus over the last year [and that] [w]e are in the process of disposing of the surplus inventory as waste through Giant Resource Recovery.” (Emphasis supplied). ActivAir further informed the Agency that “We attempted to sell the surplus inventory . . . [but] [w]hen the sales attempts failed we declared the materials waste and contracted with G[iant] R[esource] R[ecovery] to dispose of it appropriately. (Emphasis supplied). ActivAir also provided EPA with a detailed inventory of the drums and their contents that remained on-site at the Facility, along with copies of the hazardous waste manifests for previously disposed hazardous and non-hazardous wastes. In addition, ActivAir advised the Agency that the remaining drums at the Facility were “awaiting pickup by Giant Resource Recovery,” which was “still in the process of creating disposal profiles for the remaining materials” and that, while “[n]ot all the materials are hazardous” ActivAir was “utilizing a professional commercial disposal company to validate which materials are nonhazardous” and “disposing of all materials via commercial operations.”

Based upon the above information provided by ActivAir, EPA understands that the company has found no commercial market for any of the surplus materials that have been accumulated at the Facility. EPA further understands that ActivAir no longer considers any of the remaining surplus materials still being accumulated at the Facility to be commercial chemical products but has, instead, now declared all such materials to be solid wastes designated for disposal.

EPA wishes to remind ActivAir that, pursuant to Section 3005(a) and (e) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6925(a) and (e), and DRGHW § 122.1(c), no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility, except that, pursuant to DRGHW § 262.34(a) and (d), *generators* of hazardous waste who accumulate



hazardous waste for 90 days or less, and *small quantity generators* of hazardous waste who accumulate hazardous waste for 180 days or less, are exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions set forth in those sections. EPA also wishes to remind ActivAir that, once a solid waste is generated, the generator must perform a hazardous waste determination upon such solid waste in accordance with DRGHW § 262.11 requirements and provisions.

ActivAir formally determined, on or before May 12, 2014, that all materials being accumulated at the Facility are, in fact, solid wastes designated for disposal. Based upon the waste inventory list that ActivAir sent to EPA on May 12, 2014, approximately 110 55-gallon containers of waste material remain on-site at the Facility, the bulk of which appears to be hazardous waste. As a result, EPA believes that ActivAir “generated” in excess of 1,000 kilograms of hazardous waste in the month of May, 2014 (and may now be accumulating in excess of, 6,000 kilograms of hazardous waste at the Facility) was not a *small quantity generator* of hazardous waste at that time. Rather, ActivAir became a hazardous waste *generator* and, as a result, effectively has 90 days – *i.e.*, until August 10, 2014 – to ship off-site from Facility storage, for proper disposal, any solid wastes that are, in fact, also hazardous wastes.

Since ActivAir has stated that not all of the solid wastes being accumulated at the Facility are hazardous wastes, but that, it is “still in the process of creating disposal profiles,” ActivAir should understand that it will, effectively, need to complete the necessary DRGHW § 262.11 hazardous waste determinations for the remaining solid wastes being accumulated on-site at the Facility prior to August 10, 2014 in order to ensure that all identified hazardous wastes are shipped off-site from the Facility for disposal prior to that 90-day *generator* deadline. In addition, ActivAir should ensure that all containers of hazardous waste being accumulated on-site at the Facility are managed in accordance with applicable DRGHW § 262.34(a) requirements and with the applicable container management requirements of DRGHW Part 265, Subpart I, and the applicable Air Emission Standards of DRGHW Part 265, Subparts AA, BB and CC.

In light of the above information provided by ActivAir to EPA regarding the determination that all remaining drums of material being accumulated at the Facility are solid wastes and potentially hazardous wastes, **EPA herein requires that ActivAir timely submit, on or before August 30, 2012**, all requested information and all associated responsive documents to each of the questions set forth below:

1. Submit a copy of the Hazardous Waste Manifest that accompanied each off-site shipment of hazardous waste from the Facility after May 6, 2014.
2. Submit a copy of each Bill of Lading or other form of documentation that accompanied each off-site shipment of non-hazardous solid waste material from the Facility after May 6, 2014.

3. Submit a spreadsheet that identifies all of the **hazardous waste material** (including all surplus inventory which has been declared waste), if any, that remains in storage at the Facility as of August 11, 2014. Such identification shall include, for each type of hazardous waste material that remains in Facility storage on that date:
- a. *the name and the associated EPA hazardous waste number(s)* of each type of hazardous waste material;
  - b. *the volume* of each type of hazardous waste material remaining in storage;
  - c. *the number of containers* (with associated container size) of each type of hazardous waste material remaining in Facility storage; and
  - d. *the location* of each container of hazardous waste remaining in Facility storage.
- e. For each type of hazardous waste, if any, identified by you in response to the preceding question as still remaining in storage at the Facility on August 11, 2014, provide:
- a. a narrative explanation as to why that hazardous waste remains in storage at the Facility beyond the 90-day *generator* accumulation period (during which neither a Facility permit nor interim status is required) specified in DRGHW § 262.34(a);
  - b. a time estimate as to when each remaining container of hazardous waste still in storage at the Facility on that date will be shipped off-site for proper disposal; and
  - c. the reason(s), if any, asserted by ActivAir, as to why the company should not be subject to monetary penalties for operating a hazardous waste storage facility without interim status or a permit.
- f. Submit a spreadsheet that identifies all of the **non-hazardous solid waste material** (including all surplus inventory which has been declared waste), if any, that remains in storage at the Facility as of August 11, 2014. Such identification shall include, for each type of non-hazardous solid waste material that remains in Facility storage on that date:
- a. *the name* of each type of non-hazardous solid waste material;
  - b. *the volume* of each type of non-hazardous solid waste material remaining in storage;
  - c. *the number of containers* (with associated container size) of each type of non-hazardous waste material remaining in Facility storage;



- d. *the location* of each container of non-hazardous solid waste material remaining in Facility storage;
- e. *a time estimate* as to when each remaining container of non-hazardous solid waste material still in storage at the Facility on that date will be shipped off-site for proper disposal; and
- f. **a copy of all written documentation** in your or the company's possession or control which supports each waste determination, or use of knowledge, pursuant to which ActivAir, or anyone acting on behalf of ActivAir, made its determination that each above-identified type of non-hazardous solid waste material was not, in fact, a hazardous waste.

The provisions of Section 3008 of RCRA, 42 U.S.C. § 6928, authorize EPA to pursue penalties for failure to comply with or respond adequately to an information request under Sections 3007(a) of RCRA. In addition, providing false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001. The information you provide may be used by EPA in administrative, civil or criminal proceedings.

Your response must include the following signed and dated certification:

*I certify that the information contained in this response to EPA's request for information and the accompanying documents is true, accurate and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.*

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ActivAir is entitled to assert a claim of business confidentiality covering any part or all of the information submitted, in a manner described in 40 C.F.R. § 2.203(b). Information subject to a claim of business confidentiality will be made available to the public only in accordance with 40 C.F.R. Part 2, Subpart B. Unless a claim of business confidentiality is asserted at the time the requested information is submitted, EPA may make this information available to the public without further notice to the Facility.

This request for information is not subject to review by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520.

Please send your response to:

Debra E. Moody  
U.S. Environmental Protection Agency, Region III  
Office of Land Enforcement (3LC70)  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029.

If you have any questions concerning this matter, please contact Ms. Debra Moody at (215) 814-3294.

Sincerely,



Carol Amend, Associate Director  
Land and Chemicals Division  
Office of Land Enforcement

Enclosures

cc: Debra E. Moody (3LC70)  
A.J. D'Angelo (3RC30)  
Terri DiFiore (3LC70)